

Before the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of

STEPHEN O. MEREDITH

AL HAZELTON

For a Construction Permit for
a New FM Station on Channel 243C1
at Audubon, Iowa

) **MM DOCKET NO. 93-300**

) File No. BPH-920430MD

) File No. BPH-920430ME

) **RECEIVED**

) **MAR 1 1 1994**

To: Honorable John M. Frysiak
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

SECOND MOTION TO ENLARGE ISSUES AGAINST AL HAZELTON

STEPHEN O. MEREDITH

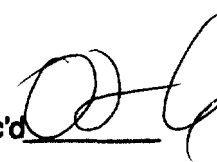
Gary S. Smithwick
Shaun A. Maher

His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800

March 11, 1994

No. of Copies rec'd
List ABCDE



SUMMARY

Stephen O. Meredith ("Mr. Meredith") respectfully requests that the Presiding Judge enlarge the issues against Al Hazelton ("Hazelton") to include general financial, false certification and misrepresentation issues; real party in interest issues; unauthorized transfer of control impact issues; §1.65 and §73.3514 failure to report issues.

Discovery has revealed numerous flaws in Hazelton's application for a new 100,000 watt FM station at Audubon, Iowa. Hazelton is relying on an "accommodation letter" from a bank. His application fails to disclose all sources of funding. Hazelton has gone to great lengths to conceal an unnatural business relationship with his employer, Wireless Communications, Inc. ("Wireless"), that defies logic and normal business practices. Wireless is the licensee of KJAN(AM), Atlantic, Iowa, some 25 miles from Audubon. Wireless is funding between 95-99% of Hazelton's costs for his application through a series of apparently bogus loans. If Hazelton obtains a construction permit, he will be a formidable competitor to KJAN, a "stand-alone" AM station. Wireless is trying to create the illusion that Hazelton's project is arms-length, when in fact Wireless is Hazelton's partner in the new FM station. Wireless' chairman and principal stockholder is a prominent Atlantic lawyer -- no rube to be bamboozled by Hazelton. The simple conclusion is that Wireless is really using Hazelton as a front because if Wireless applied for the station, it would have no chance of prevailing in the comparative hearing.

Hazelton revealed during his February 25, 1994, deposition that he has borrowed from Wireless between 95 to 99% of the money to pay his application's expenses. Hazelton admitted that he was unaware of an important cash contribution requirement of his proposed lender, First Whitney Bank & Trust ("First Whitney"). Mr. Meredith met with Frank Greiner, Hazelton's contact person at First Whitney. During this meeting, Greiner stated that the bank requires borrowers to contribute one half of the capital necessary for projects on which the bank makes loans. Therefore, a prima facie case is raised as to whether Hazelton will be able to contribute one half of the funds required by his proposed budget in order to obtain the bank loan.

Hazelton should have listed himself and/or Wireless on his application as an additional source of funds. Wireless should have been listed since it is providing virtually all the costs of Hazelton's application. If Hazelton planned to contribute half of the construction costs, either directly or through loans, he should have listed himself. Failure to list these sources constitutes a violation of §73.3514 of the Rules, if Wireless agreed pre-filing to make the loans; and a violation of §1.65 of the Rules if the agreement arose post-filing, but Hazelton failed to timely amend his application to report the additional source.

Furthermore, Meredith demonstrates that First Whitney's commitment was contingent upon an additional review by the bank's Board of Directors and violated Federal bank regulations by requiring the co-guaranty of Hazelton's wife, Ella. These facts support the finding that the bank's commitment did not constitute the requisite "reasonable assurance," and that Hazelton falsely certified his application in

this regard.

Hazelton's deposition confirmed that he was apparently a party to an unauthorized transfer of control of KJAN that Wireless concealed from the Commission. The transfer occurred January 2, 1988, but no application seeking consent therefor was filed until May 16, 1988. The application contained direct misrepresentations as to the ownership of KJAN. A critical document was apparently altered to conceal the unauthorized transfer. The impact of this broadcast misconduct on Hazelton should be expored in the hearing.

Meredith requests that the issues to be enlarged and that the Presiding Judge order Hazelton to produce additional documents and permit additional discovery on these various issues.

Mr. Meredith also suggests that the Judge issue a Notice of Apparent Liability for forfeiture up to \$250,000 for Hazelton's misconduct in this case.

TABLE OF CONTENTS

<u>Motion</u>	<u>Page</u>
SUMMARY.....	i
TABLE OF CONTENTS.....	iv
I. TIMELINESS.....	1
II. PRELIMINARY STATEMENT.....	2
III. THE ADDITION OF FINANCIAL ISSUES AGAINST HAZELTON IS WARRANTED IN THIS CASE.....	4
A. Background - Financial Information.....	4
B. The First Whitney Bank Letter Did Not Confer Reasonable Assurance.....	9
C. First Whitney's Commitment Violates Federal Banking Laws.....	15
D. Hazelton's Failure To Disclose The Wireless Loans Was A Violation Of §1.65 Of The Rules.....	16
IV. THERE IS SUBSTANTIAL EVIDENCE THAT WIRELESS COMMUNICATIONS, INC. AND/OR J.C. VAN GINKEL ARE UNDISCLOSED PARTIES TO HAZELTON'S APPLICATION.....	18
A. Background.....	18
B. Wireless Is An Undisclosed Party To Hazelton's Application.....	20
V. HAZELTON'S PARTICIPATION IN AN UNAUTHORIZED TRANSFER OF CONTROL OF KJAN(AM) RAISES QUESTIONS CONCERNING HIS CHARACTER QUALIFICATIONS.....	25
A. Background - Unauthorized Transfer of Control.....	25
B. Hazelton was a Party to an Unauthorized Transfer of Control of KJAN(AM) in January, 1988.....	28

C.	Apparent Material Misrepresentations were Made to the Commission.....	29
D.	The Altered Document Contained in the KJAN(AM) Ruling Shows Motive.....	30
VI.	CONCLUSION.....	31
VII.	ISSUES REQUESTED.....	32
A.	Additional Discovery Requests.....	33
B.	Consideration of Forfeiture.....	36

Before the
Federal Communications Commission
 Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 93-300
)	
STEPHEN O. MEREDITH)	File No. BPH-920430MD
)	
AL HAZELTON)	File No. BPH-920430ME
)	
For a Construction Permit for)	
a New FM Station on Channel 243C1)	
at Audubon, Iowa)	

To: Honorable John M. Frysiak
 Administrative Law Judge

SECOND MOTION TO ENLARGE ISSUES AGAINST AL HAZELTON

Stephen O. Meredith ("Mr. Meredith"), by and through counsel and pursuant to §1.229(c) of the Commission's rules, hereby submits his "Second Motion To Enlarge Issues Against Al Hazelton" ("Motion"). Mr. Meredith requests the addition of general financial, false certification and misrepresentation issues; real party in interest issues; unauthorized transfer of control impact issues; §1.65 and §73.3514 failure to report issues; and related general character qualifications issues against Hazelton.¹ In support whereof, the following is shown:

I. TIMELINESS

1. This Motion is based upon newly discovered evidence and is filed pursuant to §1.229(c) of the rules. The majority of the allegations raised in this Motion are

¹ On February 25, 1994, the Commission issued a Public Notice, FCC 94-19, freezing comparative hearings. However, the Public Notice also stated that parties are permitted to continue to pursue issues related to the basic qualifications of applicants. See, Public Notice at p. 2. This Motion raises matters related to Hazelton's financial and character qualifications and should be considered regardless of the Commission's freeze.

based upon documents that were produced by Hazelton on February 24, 1994, in response to a "Request For Supplemental Document Production" served upon him by Mr. Meredith. In addition, many of the allegations contained herein are based upon Hazelton's deposition testimony of February 25, 1994. A transcript of Hazelton's deposition was not delivered to counsel until March 4, 1994. Therefore, since this Motion is being submitted with 15 days of the receipt of either of these two sets of new information, it is timely-filed. See §1.229(c) of the rules.

II. PRELIMINARY STATEMENT

2. Discovery in this case has revealed Hazelton's application to be an ill-fated project of his employer, Wireless Communications, Inc. ("Wireless"), the licensee of KJAN, Atlantic, Iowa. Audubon is approximately 25 miles distant from Atlantic which will receive city-grade service from the Audubon station.² Documents produced by Hazelton, and Hazelton's deposition, have provided substantial evidence that the application was conceived and prepared by Wireless, but at the last minute "adopted" by Hazelton. This unfortunate adoption has resulted in wholesale violation of the Commission's Rules.³

² See Exhibit 7, Deposition of Al Hazelton Exhibit 2, copy of Exhibit E-6 to Hazelton's application, coverage map. Examination of Exhibit E-6 reveals that the distance between Atlantic and Hazelton's site is only about 10 miles while the distance between Hazelton's site and Audubon is about 20 miles. For all practical purposes, Hazelton proposes a station to serve Atlantic, rather than Audubon, since its signal strength will be much greater in Atlantic.

³ Hazelton's eleventh hour substitution apparently resulted in his falsely certifying his application. The Presiding Judge in Memorandum Opinion and Order, FCC 94M-148, released March 11, 1994, has already added false certification and misrepresentation issues against Hazelton.

3. Wireless, not Hazelton, petitioned the FCC to allot the FM channel that was eventually assigned to Audubon⁴. It was Wireless' chairman and principal shareholder, James C. Van Ginkel, that met with First Whitney Bank & Trust ("First Whitney") to obtain a letter to show the FCC evidence of reasonable assurance of funds. It was Van Ginkel that obtained a transmitter site. Wireless was ready to file the application for the construction permit, but at the last minute, in fact, on the very day the application was filed, Hazelton finally "adopted" Wireless' application. As a result, Hazelton has only a worthless "accommodation" letter from the bank. The letter violates federal banking laws, as well. Hazelton has borrowed, and continues to borrow, from Wireless, virtually all the funds to pay the costs of his application. He has pledged his stock in Wireless, but Wireless failed to file a copy of the pledge agreement as required by the Commission's Rules. Hazelton failed to amend his application to report his reliance on Wireless as a source of funding. All this was apparently done to conceal Wireless' true role as the real party in interest in Hazelton's application.

4. Documents produced and Hazelton's deposition also uncovered a serious unauthorized transfer of control of Wireless, the licensee of KJAN. This transfer was successfully covered up by Wireless until February 24, 1994, when documents surfaced that showed that control of Wireless was transferred several months prior to the date on which Wireless sought FCC approval of the transfer. Direct misrepresentations were made in the application for transfer of control, which

⁴ Wireless had sought the channel for nearby Atlantic.

Hazelton signed. A critical document was apparently altered to cover up evidence of the unauthorized transfer. These matters must be the subject of a hearing to determine the impact of the violations on Hazelton's fitness to be a Commission licensee.

5. Each of these serious, decisionally significant, matters is described in detail in the following pages.

III. THE ADDITION OF FINANCIAL ISSUES AGAINST HAZELTON IS WARRANTED IN THIS CASE

A. Background - Financial Information

6. When Hazelton submitted his Audubon application, he listed First Whitney as the source for all of the \$600,000 he estimated he would need to build and operate his new station. Hazelton's application is dated April 28, 1992. Mr. Hazelton stated in his application that he had a commitment of \$650,000 from First Whitney and he listed "Frank Greiner" as the contact at the bank. See Exhibit 1.

7. In his Standardized Document Production, under the category of "bank letters and other financing documents," Mr. Hazelton produced just two documents. See Exhibit 2. The first was a copy of a letter dated April 29, 1992 (one day after Hazelton signed his application), from Mr. Greiner, First Whitney's "Executive Vice President," addressed to Hazelton. In this letter, Mr. Greiner stated that the bank "was willing, in principle, to lend you up to \$650,000.00 subject to approval by First Whitney Bank & Trust's Board of Directors...provided that the following conditions are met...." One of the conditions listed in the letter was: "All reasonable and ordinary credit criteria of First Whitney Bank and Trust are met at such time as you

(a) receive the construction permit; (b) request a formal lending commitment.... The letter also stated that the bank's commitment was "subject to approval by First Whitney Bank & Trust's Board of Directors." Finally, the letter stated that "[T]he loan will be collateralized with all the assets of the station and of course your and Ella's personal guarantee." The other document produced by Mr. Hazelton was a copy of a "Personal Guarantee" of "Ella Hazelton." See Exhibit 2.

8. At the time he filed his Audubon application, Hazelton was President and Director of Wireless, and general manager of KJAN. He continues to be 15.4 percent stockholder of Wireless, the licensee of KJAN(AM).⁵ Wireless was to be the original entity to file for the new Audubon station. Wireless' Chairman, director, secretary, treasurer and 38.46 percent stockholder, James Van Ginkel, worked with Whitney Bank to obtain a financing commitment for the application.⁶ Van Ginkel was close to Mr. Greiner and helped Mr. Greiner design the wording of the First Whitney commitment letter. See Dep. TR 48. Hazelton stated that he had not submitted any documents to First Whitney concerning his proposed Audubon station. See Dep. TR 47. Hazelton did not submit a budget or business plan to the bank. Id.⁷

⁵ In an amendment filed on January 21, 1994, Hazelton reported that he had resigned his position as President and Director of Wireless. However, Hazelton still holds his 15.4 percent stock interest in the corporation.

⁶ See "Deposition of Al Hazelton," at Dep. TR 45-46, copy of pertinent parts are contained as Exhibit 7. References to the deposition are given as Dep. TR ____.

⁷ Hazelton testified that Mr. Greiner was his banker and had all his papers. Dep. TR 47.

9. As detailed in his attached Declaration,⁸ Mr. Meredith met with Mr. Greiner on February 11, 1994. During the course of their meeting, Mr. Meredith asked Mr. Greiner for a description of the Bank's credit criteria for loans to new or existing businesses. Mr. Greiner stated that the Bank's minimum requirements on all such loans included each of the following:

- a. A minimum capital contribution by the borrower in an amount equal to 50% of the overall project cost, which capital contribution might be able to be reduced somewhat (but in no event to a level below 25%) if, but only if, the loan were guaranteed by the U.S. Small Business Administration.
- b. The amount of the Bank loan would not exceed 50% of the value of the borrower's inventory, accounts receivable and equipment and not more than 60% of the value of any real estate included in the collateral.
- c. The Bank would lend "nothing for blue sky."
- d. Any loan would have to be personally guaranteed by the principal, which guaranty would be in addition to, and not in lieu of, the capital contributions referred to above. Mr. Greiner stated that even if the principal had a substantial net worth, the principal would still have to make a cash contribution to the business as described above.

Exhibit 3 at ¶4.⁹

10. Mr. Greiner also stated to Mr. Meredith that Greiner thought that the Hazelton financing letter had lots of outs and conditions on the part of Bank. Id. At his deposition, Hazelton stated that he was unaware that the bank had any capital

⁸ Exhibit 3.

⁹ Mr. Meredith has also obtained from Mr. Dick Bolton of First Whitney Bank, a list of the bank's "General Loan Requirements." See Exhibit 4.

contribution or cash injection requirements. See Dep TR 71.

11. Hazelton has been borrowing money from Wireless to pay the costs of his application. See Dep. TR 59. Hazelton has stated that: "...I probably would not be borrowing those funds were it not for this application process." Dep. TR 69.

Hazelton borrowed \$2,030 from Wireless to pay the filing fee on his application. Dep. TR 61. The fee was advanced from a trust fund that Wireless' Washington attorney maintained on behalf of Wireless.¹⁰ Hazelton's story is that he reimbursed Wireless for these and subsequent expenses by the execution of promissory notes, secured by Hazelton's stock in Wireless. The procedure has been for Hazelton to execute a promissory note, Wireless to provide him with a check, Hazelton to deposit the check into an account that he used for his Audubon application, and to then pay his application expenses out of this account. See Dep. TR 49-50 and 59. The effect of all this is that the taking money from KJAN's pocket and replacing it in the same pocket in an attempt to create the illusion of an arms-length transaction. However, the illusion is unmasked, revealing Wireless as the real party in interest in Hazelton's application.

12. As of February 25, 1994, Hazelton had executed three such notes to Wireless. See Exhibit 5. When he was asked what portion of his application costs were paid with his own money and not by money borrowed from Wireless, Hazelton was not certain but eventually admitted that the amount was "very small," probably 1

¹⁰ See Van Ginkel's letter of April 30, 1993, a copy of which is contained in Exhibit 5. See also Dep. TR 51, 61.

percent and "certainly less than 5 percent." See Dep. TR 63-64. The remaining portion of his expenses have been paid through the loans from Wireless.

13. Mr. Van Ginkel, in a letter to Hazelton, dated February 1, 1994, noted the amount of principal¹¹ that Hazelton had accumulated through his loans from the corporation. See Exhibit 5. In his letter, Van Ginkel set a specific limit on the amount of these loans and stated that the corporation would hold Hazelton's stock as collateral. Van Ginkel explained that: "As you have found out, no other lender will go that far on a minority interest in a closely held corporation." Van Ginkel also stated: "We will lower the interest rate since our borrowed funds are costing us less than they were when you started this project." While the promissory notes contain specific due dates, Hazelton at his deposition was not aware when the interest and principal on these notes will be due. Dep. TR 70. Hazelton has not paid any of the interest on these notes and he has a verbal understanding with Mr. Van Ginkel that the interest will be carried forward. Dep. TR 67. Hazelton's financial arrangement defies logic. Why would KJAN, the stand-alone AM station most threatened by competition from it, finance a new 100,000 watt FM station broadcasting from just 10 miles away, upon terms and conditions Hazelton could not obtain elsewhere? The answer is simple. The evidence indicates that KJAN is using Hazelton as a front to obtain its own station, but concealing its ownership role. The Court of Appeals recently decried how the Commission's policy provides rich incentives for the

¹¹ Hazelton's documents were masked as to amounts, dates, and dates of repayment. Hazelton's Counsel agreed to provide information as to the dates the notes were made, but has not yet complied with his agreement.

adoption of firm structures characterized as "strange and unnatural."¹² This is just such a strange and unnatural structure.

**B. The First Whitney Bank Letter Did Not Confer
Reasonable Assurance**

14. It is long-standing Commission policy that, prior to certifying its financial qualifications, an applicant must confirm that it has "sufficient net liquid assets on hand...to construct the proposed facility and operate for three months without revenue." See Instructions To FCC Form 301 at p. 5 (February 1992 version).¹³ If the applicant is relying on outside sources for funding (banks, other individuals, etc.), it must have "reasonable assurance" that its source will provide the requisite funding. See Scioto Broadcasting, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990), rev. den., 6 FCC Rcd 1893 (1991); recon. dismissed, 6 FCC Rcd 4626 (1991).

When the outside source is a bank or lending institution, the Commission expects the applicant to obtain a loan commitment letter, which must include, inter alia, specific terms as to the amount of the loan, interest rate and collateral. See Scioto Broadcasters, 5 FCC Rcd at 5160. The Instructions to FCC Form 301 state further that, when a party makes its financial certification, it "is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments." Instructions To FCC Form 301 (February 1992 version) at p. 5. The evidence attached to this pleading demonstrates that, for a variety of

¹² See Bechtel v. FCC., 10 F. 3d 875 (D.C. Cir. 1993), at ¶2 E.

¹³ Mr. Hazelton filed his Audubon application on the February, 1992, version of FCC Form 301.

reasons, at the time he certified his application, Hazelton did not have the requisite "reasonable assurance" of funding from committed sources to cover his proposed budget.

15. At the outset, it is questionable whether Hazelton has ever received a timely bona fide lending commitment from a bank official with the capacity to extend such an offer. The Review Board has noted, an "applicant may not certify its financial certification and then arrange financing." Opportunity Broadcasting of Shreveport, Inc., 68 RR 2d 1561, 1563 (Rev. Bd. 1991). The First Whitney Bank letter is dated April 29, 1992 and was not in existence on the date Hazelton claims he signed his application - April 28, 1992. It is obvious from Hazelton's deposition testimony that the commitment was originally drawn up for Wireless, which decided at the last minute to not go forward with an application. Mr. Van Ginkel was instrumental in getting the bank commitment and Hazelton never supplied the bank with any budget or business plan. When Wireless decided to create the illusion of abandoning the Audubon filing, Al Hazelton was quickly ushered in to take its place. One day after signing his application, the First Whitney letter was created. Therefore, a question exists as to whether the First Whitney letter was drafted and Hazelton's name later substituted for Wireless' without any independent review of Hazelton by the bank. This would mean that the First Whitney letter is nothing more than a mere accommodation. Supporting this conclusion is the fact that Hazelton could not remember when he met with Mr. Greiner to obtain the bank's letter. See Dep. TR 46-47. Hazelton was unaware of key financing requirements (cash contribution) and

did not provide the bank with a budget or business plan of his own. As such, it appears that the bank made no review of Hazelton's \$650,000 construction project and that its letter was not a bona fide reasonable assurance letter.

16. The First Whitney bank letter is specifically conditioned upon an additional review by the bank's Board of Directors. See Exhibit 2. This condition was obviously the bank's way of giving itself an easy way out of its hastily prepared letter to Hazelton. Furthermore, this condition precedent to the loan draws into question whether Mr. Greiner possessed the authority to provide reasonable assurance of financial availability. While the Commission has recognized that bank commitments may be conditioned upon a subsequent final review by the bank of a borrower's qualifications, such conditions are added to take into account conditions existing at the time of the grant of a construction permit and/or circumstances that may have changed during the pendency of a comparative proceeding. See, Scioto Broadcasters, L.P., 5 FCC Rcd at 5161, citing, Multi-State Communications, Inc. v. FCC, 590 F.2d 1117 (D.C. Cir. 1978). In this case, the bank's condition is not a future condition for financing. The Board of Directors must review Hazelton's qualifications before he will even have a lending commitment. Since this condition precedent has not been met, it was not reasonable for Hazelton to have relied upon Mr. Greiner's letter to support his financial certification.

17. Even assuming this condition were met, First Whitney's commitment letter specifically states that Hazelton would be required to meet all of the bank's "reasonable and ordinary credit criteria" in order for a loan to be made. See Exhibit

2. Mr. Meredith has learned that one of the bank's minimum credit criteria is that the borrower also contribute at least 50 percent of the overall project cost. See Exhibits 3 and 4. Mr. Greiner stated that this was a requirement, regardless of the borrower's net worth. In this case, that would mean that Hazelton would be required to make a cash contribution of at least \$300,000 of the \$600,000 he estimated it would take to build and operate his new station with First Whitney lending the balance.¹⁴ However, Hazelton has not demonstrated how he will be able to finance one half of his budget, especially when he is presently borrowing money from Wireless just to pay his expenses. In fact, Hazelton is not even aware that such a cash contribution is required. Dep. TR 71. Even if Hazelton could contribute the \$300,000 required, he has not listed himself or any other entity in the application as a source of these funds. Thus, his financial showing is fatally flawed.

18. Hazelton's alternative plan of financing (borrowing money from Wireless to pay his prosecution costs) varies from the plan described in his application. His application makes no mention of his borrowing money from Wireless to meet the costs of his application. If Hazelton intended to rely on this funds from the outset, then his failure to disclose this source of financing was a violation of §73.3514 of the rules, which requires that "[E]ach applicant shall include all information called for by the particular form..." 47 C.F.R. §73.3514. The only other explanation is that Hazelton decided at some point after he filed his application to rely upon Wireless as

¹⁴ While First Whitney's commitment is for \$650,000, given its cash infusion requirement, it would be impossible for Hazelton to ever reach the full amount of the bank's commitment, since the asset value of his station will never get that high.

a source of financing. In that case, his failure to disclose a change to the information contained in his application was a violation of §1.65 of the rules. See 47 C.F.R.

§1.65. Either way, Hazelton's failure to disclose his Wireless loans was a violation of the Commission's rules.

19. The Commission expects applicants to be able to show that they can meet all proposed lending requirements from their financial source.¹⁵ Where a question exists as to whether an applicant will be able to meet its lender's credit criteria, enlargement of the issues is justified.¹⁶ Serious questions exist as to whether Hazelton could ever comply with First Whitney's credit requirements if he is unaware of those requirements and if he cannot even pay his own expenses without borrowing money from his employer.¹⁷

20. Another of First Whitney's minimum credit requirements is that it will limit its loan to not more than 50% of the value of the borrower's inventory, accounts receivable and equipment and 60% of the borrower's real estate to be include in the

¹⁵ See, "Instructions To FCC Form 301," supra and International Panaroma TV, Inc. 49 RR 2d 400 (ALJ 1981).

¹⁶ See, Global Information Technologies, Inc., 67 RR 2d 1495, 1497 (Rev. Bd. 1990), where an additional proceeding was necessary because an applicant's financing was based upon a commitment from a bank which had subsequently issued new internal regulations concerning financial proposals for start-up broadcast stations and the bank's ultimate decision would depend on the applicant's meeting those requirements. See also, Sound Broadcasting Co., 69 RR 2d 776, 778 (Rev. Bd. 1991), where the withdrawal of a partner whose guarantee was required for a bank loan justified enlargement of issues.

¹⁷ As the Court of Appeals has previously found, the fact that a principal is borrowing money from outside sources in order to pay the applicant's FCC fees raises questions as to whether the applicant can pay its prosecution costs. See, Weyburn v. FCC, 71 RR 2d 1386, 1392 (D.C. Cir. 1992), citing, Fenwick Island Broadcasting Corp., 7 FCC Rcd 2978 (1992).

collateral. See Exhibit 3. In this case, Hazelton has estimated that it will cost \$508,839.00 for his station's equipment and tower site acquisition.¹⁸ Therefore, pursuant to First Whitney's lending limit, the maximum loan that Hazelton could possibly expect would be approximately \$260,000. This leaves the question of where Hazelton will obtain the other \$248,000 he will need to meet his anticipated costs. Hazelton has produced no documents to resolve this question. Again, Hazelton's financial showing is fatally flawed.

21. Finally, Hazelton has not produced any of the documents (if they exist) that he would have had to submit to First Whitney in order to demonstrate his creditworthiness or business plan. In Scioto Broadcasters, L.P., supra, the Review Board stated that one of the factors it would review in determining whether an applicant had "reasonable assurance" from a lending source, is whether the prospective borrower has provided the bank with financial data, and whether the bank is "sufficiently satisfied with this financial information..." Scioto Broadcasters, L.P., 5 FCC Rcd at 5160 (citations omitted). Without any supporting documentation, it is impossible to verify whether the bank ever reviewed Hazelton's qualifications and/or whether Hazelton was qualified to meet First Whitney's minimum credit requirements at the time he made his financial certification. In the absence of such a showing, the serious and material question remains whether Mr. Hazelton had the requisite reasonable assurance from First Whitney prior to certifying his financial

¹⁸ Mr. Hazelton's budget shows an equipment bid from Continental Electronics for \$469,839 and a figure of \$40,000 to purchase his tower site. See Exhibit 6.

qualifications.

**C. First Whitney's Commitment Violates
Federal Banking Laws**

22. In its letter to Hazelton, First Whitney stated that "The loan will be collateralized with all the assets of the station and of course your and Ella's personal guarantee." See Exhibit 2. However, §202.7(d)(5) of the regulations promulgated under the Federal Equal Credit Opportunity Act concerning the extension of credit by lending institutions provides:

"If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party."

12 C.F.R. §202.7(d)(5).

23. In this case, First Whitney's commitment letter is specifically conditioned upon the loan being guaranteed by Ella, who is Hazelton's wife.¹⁹ See Exhibit 2. However, this provision violates Federal banking law and renders First Whitney's letter illegal and unenforceable. Therefore, such a letter could not have constituted the necessary "reasonable assurance" for the bank's commitment. Furthermore, if First Whitney were not permitted to include such a provision in its letter, it is obvious that it would not have made a loan without Mrs. Hazelton's guarantee. As such, Hazelton would never have been able to obtain the type of commitment necessary to

¹⁹ Hazelton verbally confirmed on February 11, 1994, to Mr. Meredith, that Ella Hazelton is his wife. See Exhibit 3.

make an affirmative financial certification.

D. Hazelton's Failure To Disclose The Wireless Loans Was A Violation Of §1.65 And/Or §73.3514 Of The Rules

24. FCC Form 301 requires an applicant to disclose "its sources of funding for the construction and operation of the proposed facility...." Instructions To FCC Form 301 (February 1992 version), at p. 6.²⁰ The Instructions state that, for each source of funding, the applicant must identify "the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source." *Id.* As demonstrated above, Hazelton has been relying upon Wireless to fund the costs of his Audubon application. His application, which has not been amended, shows First Whitney Bank & Trust as his sole source of financing. Since Form 301 specifically calls for an applicant to list all sources of financing, Hazelton's failure to disclose Wireless (or himself, if he intended to meet the bank's cash contribution requirements) as an additional source is a continuous violation of §73.3514 of the rules which states that "[E]ach applicant shall include all information called for by the particular form..." and §1.65 of the rules, which requires that applicants report any substantial change to the information contained in their application. See 47 C.F.R. §1.65 and §73.3514.

25. Hazelton's omission was no innocent error. His motive to conceal this information is obvious. The fact that Hazelton cannot pay the costs of his application

²⁰ Costs include legal and engineering expenses. See, Instructions to FCC Form 301, at p.6.

without borrowing money from his employer not only calls into question his financial abilities and the bona fides of his bank commitment, but also whether this additional financial source, which is the licensee of a nearby AM station, will be able to use its position as creditor to exert control of Hazelton's new station. See, Weyburn v. FCC, 71 RR 2d 1386, 1392 (D.C. Cir. 1992), citing, Fenwick Island Broadcasting Corp., 7 FCC Rcd 2978 (1992). Certainly, Hazelton would have every reason to want to avoid drawing attention to his Wireless loans and to conceal this information from the Commission. Therefore, rather than reveal the information in his application, or file an amendment to his application, or produce documentation concerning his Wireless loans in his Standard Document Production, Hazelton chose instead to hide this information until Mr. Meredith was able to uncover it through discovery.

26. Hazelton's failure to disclose his new additional source of financing warrants the addition of a §1.65 and §73.3514 reporting issue against him. See, Weyburn Broadcasting Ltd. Partnership v. FCC, 71 RR 2d at 1392-1393 (failure to disclose information undermining financial qualifications raises possible §1.65 violations worthy of investigation). Further troubling is the fact that Hazelton did not voluntarily disclose his arrangement with Wireless via amendment or document production but rather waited until he was forced to respond to a discovery request. As the Review Board has noted, while applicants are permitted to play their cards close to the vest, the Commission should not be forced to "play procedural games with those who come before it in order to ascertain the truth." See, Edwin A.

Bernstein, 70 RR 2d 413, 415 (Rev. Bd. 1991)(citation omitted). The issues should be enlarged to determine whether Hazelton intentionally withheld this information, whether he has failed to report a material change to his proposed financing, and what affect such actions may have upon Hazelton's basic character qualifications.

IV. **THERE IS SUBSTANTIAL EVIDENCE THAT WIRELESS COMMUNICATIONS, INC. AND/OR J.C. VAN GINKEL ARE UNDISCLOSED PARTIES TO HAZELTON'S APPLICATION**

A. **Background**

27. In 1989, Wireless filed a Petition For Rulemaking seeking the allotment of a new FM station at Atlantic, Iowa. See, Atlantic, IA, et al. (Notice of Proposed Rulemaking), 4 FCC Rcd 6636 (1989). Wireless' Chairman, J.C. Van Ginkel, was the shareholder that did most of the work on the rulemaking project. Dep. TR 20. The same attorney and engineer that represent Hazelton in this proceeding prepared the rulemaking filings for Wireless. Dep. TR 21-22. Wireless' proposal was considered in a consolidated proceeding with a number of other proposals for Iowa FM stations, including a mutually-exclusive proposal for a new FM station at Audubon, Iowa. The Allocations Branch eventually chose the Audubon proposal and denied Wireless' Atlantic proposal. See, Atlantic, IA, et al. (Report and Order), 7 FCC Rcd 1370 (1992).

28. In his deposition testimony, Hazelton acknowledged that, upon the release of the Commission's Report and Order, Wireless intended to file for the new FM station at Audubon. Dep. TR 23. Hazelton states that there was "very limited" discussions among the Wireless shareholders about filing an Audubon application and

that "the vast majority of the discussions were between Mr. Van Ginkel and Barry Friedman (Wireless' and Hazelton's counsel)." Dep. TR 25. Hazelton helped Van Ginkel search for a tower site for Wireless' Audubon application. Dep. TR 34. Van Ginkel was the first to identify the owner of Wireless' proposed tower site. The same consulting engineer that Wireless had used for engineering work at its AM station, KJAN(AM), and the same engineer that had prepared the technical material for its rulemaking petition was hired to prepare the engineering for the Wireless' Audubon filing. Dep. TR 36-38. Van Ginkel provided the necessary information to First Whitney Bank & Trust in order to obtain a financial commitment for Wireless. Dep. TR 45-46 & 48.

29. Hazelton alleges that, at some point in time, Van Ginkel made the decision that Wireless would not pursue the new Audubon station. Dep. TR 25. Hazelton states that Van Ginkel's decision was based on the belief that "...it would be unlikely that it would be as strong an application as he felt it would need to be." This decision was apparently made between April 28 and April 30, 1992. Hazelton alleges that he initially made the decision to go forward by himself on that same day - April 28, 1992, when he signed his application, however his "final, total, complete" decision was made on April 30, 1992. *Id* at p. 26 & 76. Hazelton is using the same attorney, consulting engineer, tower site and bank for his application. Some of the engineering portion of the application was already completed for Wireless prior to the time Hazelton decided to go forward. Dep. TR 37. Hazelton discussed the matter of going forward on his own with Van Ginkel who answered some of Hazelton's